

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREW MARSHELLO,

Plaintiff,

- against -

NOTICE OF REMOVAL

Case No. # 21 Civ 7396

THE CITY OF NEW YORK, NYPD POLICE OFFICER
VARGAS, Tax ID No. 965591, and NYPD POLICE OFFICERS JOHN/JANE DOES NUMBERS 1-10,
Law Dept. No. 2021-024379

Defendants.
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**TO: THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK**

Defendant, THE CITY OF NEW YORK (the "City"), by and through its attorney, Georgia M. Pestana, Corporation Counsel of the City of New York, respectfully shows this Court as follows:

1. On August 24, 2021, Plaintiff commenced this action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of New York, under Index No. 157922/2021, naming the City, Police Officer Hector Vargas (s/h/a NYPD POLICE OFFICER VARGAS, Tax ID No. 965591), and NYPD POLICE OFFICERS JOHN/JANE DOES 1-10 as defendants therein (hereinafter "Defendants"), and setting forth the claims for relief upon which the action is allegedly based. See Plaintiff's Summons and Verified Complaint, annexed hereto as "**Exhibit A.**"

2. Upon information and belief, the City was served with the Summons and Verified Complaint in the above-entitled action on August 31, 2021.

3. According an affidavit of service uploaded to the New York State Courts Electronic Filing System docket, Police Officer Vargas was with the Summons and Verified Complaint in the above-entitled action on September 9, 2021.

4. The above-captioned action is a civil action of which the United States District Court now has original jurisdiction in that it includes causes of action which arise under the Constitution and laws of the United States, pursuant to 28 U.S.C. § 1331. This action is therefore removable to the United States District Court without regard to the citizenship or residence of the parties.

5. In the Verified Complaint, Plaintiff brings claims pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, federal claims of false arrest, infringement on freedom of speech, malicious prosecution, excessive force and unreasonable search and seizure, all in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution. See “**Exhibit A.**” Plaintiff also asserts state law claims for false arrest, false imprisonment, unreasonable search and seizure, negligence, assault, battery, negligent infliction of emotional distress, failure to intervene, malicious prosecution, and negligent hiring retention training and supervision. See id.

6. This Notice of Removal is timely because it is being filed within thirty (30) days of service of the Verified Complaint on the City on or about August 31, 2021. See 28 U.S.C. § 1446(b).

7. Police Officer Vargas consents to removing this action from Supreme Court of the State of New York, County of New York, under Index No. 157922/2021, to the Southern District of New York. See Consent to Removal, annexed hereto as “**Exhibit B.**”

8. The City will promptly file a copy of this Notice of Removal with the Clerk of the state court in which the action has been pending.

9. The City is unaware of any previous application for the relief requested herein.

WHEREFORE, the City respectfully requests that the above-captioned action be removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: New York, New York
September 23, 2021

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